and to attempt to base upon this common-law duty the relation of trustee and *cestui* seems hardly justifiable.

Granting, however, the assumption that the relation between the tenant and the remainder-man is, as regards the estate, that of trustee and *cestui*, it is still not clear how the conclusion reached here follows from the premise. The insurance money cannot be regarded as the product of the estate. It is simply the result of a contract made between the tenant and the insurer; and they alone are parties to it and have any interest in it. The money comes into the hands of the insured as a result of his foresight, and to reimburse him for a loss which he has suffered. To say that the fund derived from a contract made solely with reference to an interest of the tenant, — a fund, the entire amount of which will but suffice to make good the loss suffered by him in the destruction of his life interest, — is nevertheless to be held in trust for a party who was never contemplated or intended to be a beneficiary, seems to be not only an extreme extension of the doctrine of implied trusts, but a practical injustice to the tenant.

THE POWER OF THE INTERSTATE COMMMERCE COMMISSION. — The power of the Interstate Commerce Commission to regulate the rates charged by transportation companies has been the subject of many conflicting views. The matter has been vehemently debated by opponents of railroad combination, and is still under consideration in cases before the United States Supreme Court. One important question involved is whether the power conferred by the statute is limited to the regulation of existing rates, or whether it is active, and includes the right to compel railroad companies to adopt rates specified by the commission. In the case of *Cin., N. O. & T. P. R. R. Co.* v. *Interstate Commerce Commission*, 162 U. S. 184, the Court said that "if the commission . . . itself fixes a rate, that rate is prejudged by the commission to be reasonable." From this declaration an opinion started and gained ground that the commission could enforce a rate so determined. This opinion has been supported on the principle, stated in *State* v. *Fremont, C. & M. V. R. R. Co.*, 35 N. W. Rep. 118, 125 (Neb.), a case which deals with a similar commission formed under a Nebraska statute, that such a power is to be construed in relation to the end in view and the evil to be prevented. A broad construction is urged upon general grounds; in order that unjust discrimination may be effectually suppressed, it is argued as a matter of necessity that in the right to regulate rates the right to fix rates is included.

However plausible this argument in favor of a broad construction may be, — and in Nebraska it is to some extent justified by the State statute, — the Supreme Court of the United States refuses to apply the theory upon which the argument is based to the case of the Interstate Commerce Commission; and in taking this stand the court is right. The statement already quoted means no more than that when the commission has once fixed a rate, railroad companies may assume that the rate is reasonable; but from this it does not follow that the rate must be adopted by the companies, or even that a rate higher than that fixed may not be reasonable. The power of the commission, as is decided in *Interstate Commerce Commission* v. *Cin., N. O. & T. P. R. R. Co.*, 17 Sup. Ct. Rep. 896, affirmed in *Interstate Commerce Commission* v. *Alabama Midland R. R. Co.*, 18 Sup. Ct. Rep. 45, is partly executive and partly judicial, but in no respect legislative; in other words, it looks to the enforcement of

the law, not the creation of it. The statute from which the power is derived, as the court says, is virtually an authority to enforce the common-law rule that a carrier must not make unreasonable charges; this consideration furnishes no ground for attributing to this power a scope of which the common-law courts never dreamed. The strongest argument, perhaps, against the enlarged power contended for lies in the fact that the statute nowhere confers it. No legislative function can be inferred from a statute giving merely executive or judicial powers; such a function under the circumstances can arise only by express provision. In fact, if one were to draw any inference from the statute, that inference would be against a power on the part of the commission to fix rates; for by the statute the right to reduce or to increase rates in conformity with certain conditions is expressly given to the railroad companies themselves. A rational interpretation of the statute, therefore, in accordance with the analogy of the rule of common law, justifies the court when it decides that the power of the commission is to be narrowly construed, and that in publishing a schedule of rates and attempting to force railroad companies to adopt it, the commission has acted in excess of its authority.

IS OUR CIVIL SERVICE ACT FUTILE? — In view of three recent decisions, widespread interest has been aroused in the question of the right of courts of equity to interfere in removals from office of public officials whose positions are embraced within the rules drawn up by the President to give effect to the Civil Service Act. On July 28, 1897, in the case of *Priddie* v. *Thompson*, 82 Fed. 186, the United States Circuit Court for West Virginia granted an injunction restraining a marshal from removing a deputy marshal from office, the main cause for such removal having been "political opinions or affiliations." On Sept. 14 and 15, 1897, in the cases of *Woods* v. *Gary* (see 25 Wash. L. R. 591) and *Carr* v. *Gordon*, 82 Fed. 373, the Supreme Court of the District of Columbia and the United States Circuit Court for Illinois refused to grant such an injunction on substantially the same facts as in the case above. It will be remembered that the Civil Service Act, passed in 1883, authorized the President, and a commission appointed by him, to prepare rules to carry the act into effect, such rules to provide, among other things, that no officer should be removed for refusal to contribute for partisan objects. Among the rules thus drawn up by the President was one forbidding dismissal from the executive civil service of any one for "political or religious opinions or affiliations." This was followed in a later administration by an amendment requiring that full notice and opportunity of defence be given to the officer to be removed. Upon this rule, or its amendment, the plaintiffs in the three cases cited based their right. Jackson, J., in *Priddie* v. *Thompson*, *supra*, said that such rules are part of the law of the land; that the object of the act is to restrain removal from office, otherwise it is futile; and that the plaintiff having a vested right in the office the court would grant an injunction to protect such interest. The courts in *Woods* v. *Gary* and *Carr* v. *Gordon*, on the other hand, maintained that the rules thus drawn up by the President are for the regulation of executive officers, but are not a part of the law; and that the plaintiff acquired no vested right to hold office by virtue of these executive regulations.

The view taken in these two later cases would seem to be the sounder